

§ 301.91-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided, however,* That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.91-9 Costs and charges.

The services of the inspector shall be furnished without cost, except as provided in 7 CFR part 354. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

Subpart—Phytophthora Ramorum

SOURCE: 67 FR 6834, Feb. 14, 2002, unless otherwise noted.

§ 301.92 Restrictions on the interstate movement of regulated and restricted articles.

No person may move interstate from any quarantined area any regulated or restricted article except in accordance with this subpart.¹

¹Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated or restricted articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

§ 301.92-1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

Bark chips. Bark fragments broken or shredded from a log or tree.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article meets the requirements of § 301.92-5(a) of this subject and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, processing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.92-4(a)(2) of this subpart.

Duff. Decaying plant matter that includes leaf litter, green waste, stem material, bark, and any other plant material that, upon visual inspection, does not appear to have completely decomposed into soil.

Firewood. Wood that has been cut, sawn, or chopped into a shape and size commonly used for fuel.

Forest stock. All flowers, trees, shrubs, vines, scions, buds, fruit pits, or other seeds of fruit and ornamental trees or shrubs that are wild-grown, backyard-grown, or naturally occurring and do not meet the definition of nursery stock, and that are not located on a nursery premises.

Inspector. Any employee of APHIS, the U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Log. The bole of a tree; trimmed timber that has not been sawn further than to form cants.

Lumber. Logs that have been sawn into boards, planks, or structural members such as beams.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Mulch. Bark chips, wood chips, wood shavings, or sawdust, or a mixture thereof, that could be used as a protective or decorative ground cover.

Nursery stock. All greenhouse or field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any State, or any portion of a State, listed in §301.92-3(c) of this subpart or otherwise designated as a quarantined area in accordance with §301.92-3(b) of this subpart.

Regulated article. Any article listed in §301.92-2(a) of this subpart.

Restricted article. Any article listed in §301.92-2(b) of this subpart.

Soil. Any non-liquid combination of organic and/or inorganic material in which plants can grow.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§301.92-2 Regulated and restricted articles.

(a) The following are regulated articles, and may be moved interstate from a quarantined area only if accompanied by a certificate issued in accordance with the regulations in this subpart:

(1) Nursery stock (except acorns and seeds), unprocessed wood and wood

products, and plant products, including firewood, logs, lumber, wreaths, garlands, and greenery of arrowwood (*Viburnum × bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*) (except fruit), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos manzanita*), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*).

(2) Soil.

(3) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

(b) The following are restricted articles, and may only be moved interstate from a quarantined area by the U.S. Department of Agriculture for experimental or scientific purposes, and only in accordance with the regulations in §301.92-4(a)(2) of this subpart:

(1) Bark chips, forest stock, or mulch of arrowwood (*Viburnum × bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos manzanita*), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*).

(2) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the

person in possession of the product or article that it is a restricted article.

[67 FR 6834, Feb. 14, 2002; 67 FR 13560, Mar. 25, 2002]

§ 301.92-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which *Phytophthora ramorum* has been found by an inspector, in which the Administrator has reason to believe that *Phytophthora ramorum* is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which *Phytophthora ramorum* has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of *Phytophthora ramorum*.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

CALIFORNIA

Alameda County. The entire county.
Marin County. The entire county.
Mendocino County. The entire county.
Monterey County. The entire county.
Napa County. The entire county.
San Mateo County. The entire county.
Santa Clara County. The entire county.
Santa Cruz County. The entire county.
Solano County. The entire county.
Sonoma County. The entire county.

OREGON

Curry County. That portion of the county bounded by a line drawn as follows: Beginning in the northwest corner of sec. 17, T. 40 S., R. 13 W., then east along sec. 17 and 16, T. 40 S., R. 13 W., to sec. 16, T. 40 S., R. 13 W., then south along sec. 16, 21, 28, and 33, T. 40 S., R. 13 W., to sec. 33, T. 40 S., R. 13 W., then west along sec. 33 and 32, T. 40 S., R. 13 W., to sec. 32, T. 40 S., R. 13 W., then north along sec. 32 and 29, T. 40 S., R. 13 W., to the midway point of the western boundary of sec. 29, T. 40 S., R. 13 W., then west to the center of sec. 30, T. 40 S., R. 13 W., then north through sec. 30 and 19, T. 40 S., R. 13 W., to the center of sec. 19, T. 40 S., R. 13 W., then east to the western boundary of sec. 20, T. 40 S., R. 13 W., then north along sec. 20 and 17, T. 40 S., R. 13 W., to the point of beginning.

§ 301.92-4 Conditions governing the interstate movement of regulated and restricted articles from quarantined areas.

Regulated articles and restricted articles may be moved interstate from a quarantined area² only if moved in accordance with this section.

(a) *With a certificate or departmental permit.* (1) Any regulated articles may be moved interstate from a quarantined area if accompanied by a certificate issued and attached in accordance with §§ 301.92-5 and 301.92-8 of this subpart, and provided that the regulated article is moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(2) Any restricted article may be moved interstate from a quarantined area only if the article is moved:

(i) By the United States Department of Agriculture for experimental or scientific purposes;

²Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(ii) Pursuant to a departmental permit issued by the Administrator for the article;

(iii) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of *Phytophthora ramorum*; and

(iv) With a tag or label bearing the number of the departmental permit issued for the article attached to the outside of the container holding the article, or attached to the article itself if not in a container.

(b) *Without a certificate or departmental permit.* (1) The regulated or restricted article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(2) The regulated or restricted article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

(Approved by the Office of Management and Budget under control number 0579-0191)

§ 301.92-5 Issuance and cancellation of certificates.

(a) An inspector³ may issue a certificate for the interstate movement of regulated articles if an inspector determines that:

(1)(i) The regulated articles have been treated under the direction of an inspector in accordance with § 301.92-10 of this subpart; or

(ii) The regulated articles are wood products such as firewood, logs, or lumber that are free of bark; or

(iii) The regulated article is soil that has not been in direct physical contact with any article infected with *P.*

ramorum, and from which all duff has been removed.

(iv) The regulated articles are articles of nursery stock that:

(A) Are shipped from a nursery or premises in a quarantined area that is inspected annually in accordance with the inspection and sampling protocol described in § 301.92-11(a) of this subpart, and that has been found free of *Phytophthora ramorum*; and

(B) Are part of a shipment of nursery stock that has been inspected prior to interstate movement in accordance with § 301.92-11(b) of this subpart, and that has been found free of *Phytophthora ramorum*; and

(C) Have been kept separate from regulated articles not inspected between the time of the inspection and the time of interstate movement; and

(D) Have not been grown in, or moved from, other areas within a quarantined area except nurseries or premises that are annually inspected for *Phytophthora ramorum* in accordance with this section, and that have been found free of *Phytophthora ramorum*.

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)⁴ to prevent the spread of *Phytophthora ramorum*; and

(3) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) Certificates may be issued by any person engaged in the business of growing, processing, handling, or moving regulated articles provided such person has entered into and is operating under a compliance agreement. Any such person may execute and issue a certificate

³Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale MD 20737-1236, or the APHIS web site at <http://www.aphis.usda.gov/travel/aqi.html>.

⁴Sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) provide that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

for the interstate movement of regulated articles if an inspector has previously made the determination that the article is eligible for a certificate in accordance with § 301.92-5(a) of this subpart.

(c) Any certificate that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate has not complied with all conditions in this subpart for the use of the certificate. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0191)

§ 301.92-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, processing, handling, or moving regulated articles other than nursery stock may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.⁵

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered

into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.92-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates under § 301.92-5(b) of this subpart) who desires to move a regulated article interstate accompanied by a certificate must notify an inspector⁶ as far in advance of the desired interstate movement as possible, but no less than 14 days before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.92-8 Attachment and disposition of certificates.

(a) A certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate and on the

⁵Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

⁶See footnote 3 of this subpart.

waybill to identify the regulated article.

(b) The certificate for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate upon arrival at the location provided on the certificate.

(Approved by the Office of Management and Budget under control number 0579-0191)

§ 301.92-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

§ 301.92-10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy *Phytophthora ramorum* are authorized for use on certain regulated articles. The following treatments also may be used for the regulated articles indicated:

(a) *Soil*—Heat to a temperature of at least 180 °F for 30 minutes in the presence of an inspector.

(b) *Wreaths, garlands, and greenery of host material*—Dip for 1 hour in water that is held at a temperature of at least 160 °F.

[70 FR 36331, June 23, 2005]

§ 301.92-11 Inspection and sampling protocol.

(a) *Annual nursery inspection and sampling*. To meet the requirements of § 301.92-5(a)(1)(iv) of this subpart, nurseries that ship regulated articles of nursery stock interstate must be inspected for symptoms of *Phytophthora ramorum* annually in accordance with this section.

(1) If the nursery contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If the nursery contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the nursery that exceeds 100. The regulated articles to

inspected will be randomly selected from throughout the nursery.

(2) If symptomatic plants are found upon inspection, the inspector must collect at least one sample per symptomatic plant.

(3) If fewer than 40 symptomatic plants are found in a nursery during an annual inspection, the inspector must collect samples from nonsymptomatic regulated articles of nursery stock so that the total number of sampled plants is at least 40.

(4) Samples must be labeled and sent for testing to a laboratory approved by APHIS.

(5) If any regulated articles within a nursery are found to be infected with *Phytophthora ramorum*, the nursery will be prohibited from moving regulated articles interstate until such time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.

(b) *Inspection and sampling of individual shipments*. To meet the requirements of § 301.92-5(a)(1)(iv) of this subpart, each shipment of regulated articles of nursery stock intended for interstate movement must be inspected for symptoms of *Phytophthora ramorum* in accordance with this section.

(1) If a shipment contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If a shipment contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the shipment that exceeds 100. The regulated articles to be inspected will be randomly selected.

(2) If symptomatic plants are found upon inspection, the inspector will collect at least one sample per symptomatic plant, and one sample per regulated article of nursery stock that is in close proximity to, or that has had physical contact with a symptomatic plant.

(3) Samples will be labeled and sent for testing to a laboratory approved by APHIS, and must be found free of *Phytophthora ramorum* prior to the interstate movement of any regulated articles contained in the shipment.

(4) If any plants intended for interstate movement are found to be infected with *Phytophthora ramorum*, the

nursery from which they originate will be prohibited from moving regulated articles interstate until such as time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.

Subpart—Oriental Fruit Fly

SOURCE: 58 FR 8521, Feb. 16, 1993, unless otherwise noted.

§ 301.93 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.¹

[58 FR 8521, Feb. 16, 1993, as amended at 66 FR 21053, Apr. 27, 2001]

§ 301.93–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Oriental fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between the Animal and Plant Health Inspection Service and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart.

Core area. The 1 square mile area surrounding each property where Oriental fruit fly has been detected.

Day degrees. A mathematical construct combining average temperature over time that is used to calculate the

length of an Oriental fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

$$[(\text{Minimum Daily Temp} + \text{Maximum Daily Temp})/2] - 54^\circ = \text{Day Degrees}$$

Drip area. The area under the canopy of a plant.

Infestation. The presence of the Oriental fruit fly or the existence of circumstances that make it reasonable to believe that the Oriental fruit fly is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document, in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is eligible for interstate movement in accordance with § 301.93–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation or transported, carried, or allowed to be moved, shipped, transported, or carried by any means.

Oriental fruit fly. The insect known as Oriental fruit fly (*Bactrocera dorsalis* (Hendel)) in any stage of development.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Quarantined area. Any State, or any portion of a State, listed in § 301.93–3(c) of this subpart.

Regulated article. Any article listed in § 301.93–2 of this subpart or otherwise designated as a regulated article in accordance with § 301.93–2(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.93–3(b) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

[58 FR 8521, Feb. 16, 1993; 58 FR 29028, May 18, 1993]

¹Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).